

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 254 of 1998

WITH

CIVIL APPLICATION NO 4967 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRESH P MAJMUDAR

Versus

D T GANDHI SERVICE STATION THRO'PROP. PRITIBEN C DALAL

Appearance:

MR BB DESAI for Petitioners

NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/07/98

ORAL JUDGEMENT

Admit. By consent, this matter is taken up for final hearing today.

2. Heard the learned advocates for the parties.

3. The order impugned in this appeal is of

attachment before judgment stated to have been passed ex-parte by the trial Court inspite of the fact that the appellants applied for obtaining time for filing the written statement. The learned Civil Judge, (S.D.), Bharuch, by his order dated 3rd April, 1998, directed the immovable property in question being attached before judgment since the appellants were alleged to have furnished security which was directed to be given ex-parte by the learned trial Judge.

4. It has been submitted on behalf of the appellants that there was no possibility of the appellants to transfer the immovable property in question in view of the fact that the same came to be mortgaged with the Dena Bank where the appellant No.1 has been serving. The mortgage was executed in or around 1987. It has also been the case of the appellants that the appellant no.1 has been regularly paying instalments to the bank. Under such circumstances, the appellants have no objection if appropriate directions are given restraining the appellants from transferring the immovable property in question till the final disposal of the suit by quashing and setting aside the impugned order of attachment before judgment. Mr. Kansara, learned advocate appearing for the respondent fairly submits that since the interim injunction is being granted, the respondent would have no objection for replacing the order of attachment before judgment by the order of interim injunction. Hence in the facts of the case, following directions are issued :

5. The impugned orders of attachment before judgment rendered by the learned trial Judge are hereby quashed and set aside and instead, there shall be interim injunction restraining the appellants herein from transferring or alienating immovable property in question in any manner till the final disposal of the suit. This will dispose of the interim application pending before the trial Court.

6. As and when there is need for the appellants to sell or transfer the property in question, it will be open for the appellants to apply before the trial Court and the trial Court will decide the same in accordance with law after hearing the parties.

This appeal as well as above Civil Application both will accordingly stand disposed of with no order as to costs.
